causes of action disclosed by the indorsement on the writ of summons. But the court or a judge may order a statement of claim or particulars to be filed before any assessment of damages, and may order the value or damages, or either of them, to be ascertained in any other manner."

The words "pecuniary damages" therein include damages for tort. In such a case in default of appearance the plaintiff before proceeding upon default, has only to file an affidavit of service. 'In my view, this is a regular judgment.' The court has an absolute discretion to set aside such judgment if the defendants could show that they have a substantial ground of defence. The ground of defence disclosed in the defendants' affidavit in support of the application is a denial of liability and in the alternative contributory negligence on the part of the plaintiffs. This would, of course, be a good defence in a running down case.

The judgment is set aside but the defendants have to pay costs thrown away.

Order accordingly.

Solicitors: *N. Ramachandran; Shook Lin & Bok.*

RE LEONG CHEONG KWENG, DECD.

[O.C.J. (Abdul Aziz J.) November 11, 1965]

[K.L. — Originating Petition No. 7 of 1964]

Estate Duty — Valuation of collector — Appeal — Valuation of shares in a private company — Valuation of debts to estate — Estate Duty Enactment, 1941.

This was an appeal against the valuation of the collector for purposes of estate duty of certain properties belonging to the estate of the deceased. Among the assets were shares in a private company and credit balances with a private company.

Held: (1) the assessment of the value of the shares in a private company depends on the estimate of the price which in the opinion of the collector such property would fetch in the open market at the time of the death of the deceased and the court was not prepared to say that the valuation placed by the collector on the shares of the company in this case was manifestly excessive;

(2) debts, even if they are likely to be bad must be brought in for the purposes of assessment of estate duty; if they prove irrecoverable a claim may be made for refund of duty.

Cases referred to:—

(1) *Re the Estate of Wynfreda Jennie Dunbar Hogg deceased* [1938] M.L.J. 193.

(2) *In re J. B. Young deceased* [1955] M.L.J. 108.

(3) *Smyth* v. *Revenue Commissioners* [1931] Ir.R. 643.

ORIGINATING PETITION.

Robert K. C. Hoh for the petitioners.

Chan Loo Thye (Miss) for the respondent.

Cur. Adv. Vult.

Abdul Aziz J.: This is an appeal by way of petition under section 43 of the Estate Duty Enactment 1941 against the decision of the collector with respect to the valuation, for purposes of estate duty, of certain properties of the deceased who died on the 28th September 1959. The court is only concerned with four items of the property, namely:—

(a) Land held under M.C. No. 1386 Lot 3 section 92A Town of Kuala Lumpur;

(b) 30/691 shares in Kwong Yee Loong Engineering and Foundary Works, 34B, Chan Sow Lan Road, Kuala Lumpur;

(c) Shares in Fook Heng Loong Tin Mine, Pertang, Negri Sembilan;

(d) Credit balance with Leong Cheong Kweng Mines Limited.

Originally the valuations placed by the collector on items (a) and (b) were $2,290,740 and $7,889.42 respectively but these figures were later reduced to $127,705 and $3,919.52 respectively. Still not satisfied with the valuation of the collector the petitioners now apply to the court for the ascertainment of the proper values of the four items and in accordance with rule 3 has contended that the properties should be valued as follows:—

Item (a)	$27,600;
Item (b)	$ 1,500;
Item (c)	$ 5,727.21;
Item (d)	the credit balance of $296,415.40 be regarded as irrecoverable as the company was insolvent.

In regard to item (a) i.e. mining land M.C. No. 1386 Lot 3 section 92A, Town of Kuala Lumpur, it is common ground that prior to 18th May 1959 the land was worked by the deceased under a sub-lease and that on the 18th May 1959 the deceased obtained a mining certificate over the said area and that on the 16th July 1959 the deceased granted a 'Hup Tong' to Leong Cheong Kweng Mines Limited, a private limited company composed of the deceased and his children. The 'Hup Tong' was for a period of one year with option to renew and tribute was at the rate of 12%. At the commencement of the trial the petitioners maintained that although the tribute fixed by the 'Hup Tong' was at 12% the deceased was in fact entitled to only 10% as 2% had been given away by a written undertaking to one Valliappa Chettiar. Upon examination of the evidence of Valliappa Chettiar and the document concerned it was discovered that the document was not legally enforceable as there was no consideration and it was not stamped. For purposes of the valuation tribute will be reckoned at 12%. It has been agreed by both parties that the approximate content of tin ore in the land is 4,440 piculs but excluding the amang dumps. The petitioners' expert, Mr. Hazlitt in his report stated that the mine was not efficiently operated and that if the lode in the land was mined correctly it would produce much more. Mr. Hazlitt, however, admitted that in valuing the

land he did not take into account the amang dumps on the land which the collector contends was a valuable asset. The collector's case was that using the *Hoskold* formula on a tribute basis of 12½% the value of the land, including the amang dumps on the land, at the time of the death of the deceased, not taking into account the limestone quarry and the thirty-four houses which were admittedly not ancillary for the purposes of the mine, was $127,705. In the assessment of the value of the property, the collector has properly taken into account the tribute to the lessee of 12½%, the amount of tin ore (which was approximately 7,125 piculs), the price of tin at the time of the death and that if the mine was properly operated the tin ore could be extracted during the life of the lease of four years. Counsel for the petitioners finally accepts the figure of $127,716 as value of the land on a tribute basis of 12% but has asked me to hold that the difficulty of extraction and the then average output of 50 piculs a month, would adversely affect the value of the land. To my mind this is not relevant. The fact that the miners were inefficient in winning the ore had nothing to do with the price that a willing purchaser who could operate a lode mine would pay for the land. This has generally been agreed by the petitioner's expert and the evidence of Mr. Tan Kim Bee, the senior inspector of mines in this respect has not been discredited. As regards item (a), therefore, I uphold the valuation of the collector at $127,705.

As regards item (b) i.e. 30/691 shares in Kwong Yee Loong Engineering and Foundary Works, the collector has relied on the balance sheet and the profit and loss account of the company in the assessment of the value of the shares. The balance sheet for 1959 shows that the assets of the company far exceeded the liabilities although the company was newly established and the accumulated profit was $124,219.41. The collector has therefore also added $4,000 as the value of the goodwill. Whilst it is true that the basis of valuation adopted by the collector was erroneous in that he has taken not the open market value but rather the break up value of the shares, I think it is manifestly clear that having regard to the fact that for a private limited company with a capital account of $6,910, the company was doing very well for itself and that the shares of the deceased, if sold, would fetch the amount valued by the collector. The principle for valuation of shares in a private limited company was stated by Terrell J. in *Re The estate of Wynfreda Jennie Dunbar Hogg deceased,*[1] that:—

"the value of the shares.....shall be estimated to be the price which in the opinion of the commissioner such property would fetch if sold in the open market at the time of the death of the deceased. It is to a certain extent a fictitious basis of valuation, as shares which are subject to a restriction on transfer cannot be sold in the open market. .....the court is permitted to make the assumption that any purchaser could be put on the register. Subject to that all the rights and liabilities incident to the shares must be taken into consideration."

In a later case of *In re J. B. Young, deceased,*[2] the following passage from *Smyth* v. *Revenue Commissioners* [3] was quoted with approval:—

"In my opinion, in estimating the price, every advantage and disadvantage to the company, and every benefit and clog attaching to the shares, as well as the nature of the particular company must be considered. According as the facts differ more weight will be given to one element than to another. You must consider the profit-earning capacity, the return for the purchaser's investment, the general solvency of the company, the extent of the security in the shape of assets, the nature of the management, the objects of the company, its method of business, the capital value of the assets of the company, the restrictions upon the transfer of the shares and the amount of liabilities. On some of these elements persons accustomed to value can place a relevant figure, but the test for some of the others is merely general business experience. In my judgment, the profit-earning capacity of the share is the most important items, and would be most prominent in the mind of the purchaser in this case. When I say 'profit-earning capacity' I mean profit-earning on a reasonable commercial basis for a company such as may be under consideration, not necessarily as appearing in the balance sheets, which may, for reasons of the proprietors, be prepared on a particular basis. But while that is in the foreground you must consider as a definite and well marked background the capital value of the share. It may operate either to increase or decrease the price as the case may be."

Applying the above principle I am not prepared to say that the valuation placed by the collector on the shares of the company was manifestly excessive or that the company had no goodwill.

As regards item (c) the only issue there was one of fact: whether the palong on the mine was four months old as alleged by the collector or eight months old as alleged by the petitioners. According to the statement of income and expenditure of Fook Heng Loong Tin Mine (P.3) the book value of the palong was given as $9,969.90. It has generally been agreed that the average life of a palong was approximately nine to twelve months and therefore the rate of depreciation was approximately 8% per month. The evidence of the senior inspector of mines shows that the palong in question was brought into use on the 10th June 1959 and it was in use at the time of the death of the deceased and that up to that time it had been in use for 110 days. I, therefore, hold as a fact that the palong in question was used for 110 days and, therefore, the valuation placed by the collector on the property of the deceased in Fook Heng Loong Tin Mine, as fixed by the collector, is upheld.

The last item was credit balance with Leong Cheong Kweng Mines Limited amounting to $296,415.40. The grounds were, firstly, that the machinery of Leong Cheong Kweng Mines Limited was subject to a bill of sale. At the commencement of the proceeding the petitioners wanted to adduce evidence to show that the machinery was subject to a bill of sale and

therefore the book value of the machinery in the 1958 balance sheet should be disregarded and a reduced value should be fixed thereon. The introduction of this evidence was objected to on the ground that that issue is pending before another court and as far as the present case was concerned the balance sheet made no mention of the machinery being charged or sold to any creditor. I hold, therefore, that the petitioners are estopped from denying that the machinery was unencumbered when the balance sheet for 1958, upon which the petitioners are relying for support in their appeal, shows that the machinery was unencumbered. Secondly: that the company was insolvent at the time of the death of the deceased. The company has no assets but has liabilities amounting to over $200,000. In that event, therefore, it was urged that no value should be given to this credit balance or in account thereof. It is true, looking at the balance sheet of the company as at 30th June 1958, that the liabilities of the company far exceeded the assets of the company. But that ground alone, to my mind, is insufficient. A credit balance in another company is still an asset of the deceased until it is proved to be irrecoverable. It has been suggested that the collector should estimate the value of the credit balance upon supposed liquidation of the company. I think this is a wrong principle to apply. There is no evidence that the company is going to be liquidated or that the debt is irrecoverable. No attempt has, in fact, been made to recover the debt. It is stated in *Woolley's* on Death Duties (7th edition) in reference to debts or credit balance of the deceased —

"Debts must be brought in even thought they are likely to be bad, and if they afterwards prove to be irrecoverable a claim may be made for repayment of duty."

This is a sound principle which I would adopt and for which I can find support, firstly in the definition of "property" in the Estate Duty Enactment 1941 which states that:—

"property includes.....

(a) any debt of any kind due to the deceased person at the date of his death.....or if such debt is unsecured (as in this case) but has been recovered or is recoverable in any court within the Malay States."

and secondly, under section 41 of the Enactment, if a debt proves totally irrecoverable or if only a part of it could be recovered, then the petitioner could make out a case for a refund under that section. I hold, therefore, that the collector was correct in taking the book value of credit balance as the proper value of the assets of the deceased in that company.

In the circumstances the appeal is dismissed and the petitioners shall pay the costs of the respondent as taxed by a proper officer of the court.

Appeal dismissed.

Solicitors: *Shook Lin & Bok.*

GNANASUNDRAM v. PUBLIC SERVICES COMMISSION

[O.C.J. (Raja Azlan Shah J.) November 8, 1965]

[K.L. — Originating Motion No. 13 of 1965]

Administrative Law — Public services — Temporary employment — Termination of employment-contract — Whether necessary to afford a hearing — Certiorari — Application to enlarge time for making application — English R.S.C. O. 59 rr. 3 & 4 — R.S.C. 1957, O. 1 & 2, O. 64 r. 7 — Constitution of Malaysia, arts. 132(2A) and 135.

The applicant applied for an order of *certiorari* to quash the decision of the Public Services Commission terminating the appointment of the applicant as a temporary officer. The application was made more than six months after the decision of the Public Services Commission and the applicant applied for enlargement of time to make the application.

Held: (1) the court will only extend the time where a strong case for it is shown and the only delay that the court will excuse is the delay involved in the pursuit of a legal remedy open to the applicant;

(2) in this case the relationship between the Government and the applicant was one of contract and the Government was therefore entitled to terminate the employment of the applicant by payment of a month's salary in lieu of notice, as provided in the contract;

(3) the applicant in this case was not dismissed from the service and therefore the provisions of article 135(2) of the Constitution did not apply so as to give him an opportunity to be heard;

(4) in the circumstances no strong case had been established to warrant the court in enlarging the time in respect of the application and therefore the application must be dismissed.

Cases referred to:—

(1) *Gandhinagar Motor Transport Society* v. *Bombay State* A.I.R. 1954 Bom. 202.

(2) *Satish Chandra Anand* v. *The Union of India* A.I.R. 1953 S.C. 250 at p. 252.

ORIGINATING MOTION.

A. Mahendra for the applicant.

Au Ah Wah (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is an application for leave to apply for an order of *certiorari* to quash the decision of the Public Services Commission terminating the appointment of the applicant as a temporary enforcement officer in the road transport department. In the alternative, to ask for leave for enlargement of time to make the application.

The procedure in applying for an order of *certiorari* is well settled in the United Kingdom. Unfortunately, no provisions exist in our Rules of the Supreme Court to entertain such an appli-tion. However, Order 1 rule 2 of the Rules of